

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2013-0527

FOR MANDATORY MINIMUM PENALTIES  
IN THE MATTER OF

MALAGA COUNTY WATER DISTRICT  
MALAGA COUNTY WATER DISTRICT WASTEWATER TREATMENT FACILITY  
FRESNO COUNTY

This Complaint is issued to Malaga County Water District (hereafter Discharger) pursuant to California Water Code (CWC) sections 13385, which authorizes the imposition of Administrative Civil Liability (ACL) and CWC section 13323, which authorizes the Executive Officer to issue this Complaint. This Complaint is based on findings that the Discharger violated effluent limitations of Waste Discharge Requirements (WDRs) Order 99-100 and R5-2008-0033 (NPDES No. CA0084239).

The Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) finds the following:

1. The Discharger owns and operates the Malaga County Water District Wastewater Treatment Facility (Facility), which provides sewerage for the unincorporated community of Malaga and its industrial users. Non-domestic sewage comprises approximately 90 percent of the influent flow to the Facility. Malaga discharges its effluent in one of two ways: secondary-treated wastewater is discharged to unlined evaporation percolation disposal ponds, and tertiary-treated wastewater is discharged to the Fresno Irrigation District Central Canal (Central Canal), a water of the United States.
2. Central Canal is a tributary of the Kings River via the Fresno and Fancher Creek Canals and feeds into other canals and aqueducts to the south and to the west. The Central Canal is hydraulically connected to the Fresno Slough that drains to the San Joaquin River during periods of heavy rain. The Fresno Slough and the San Joaquin River are both waters of the United States.
3. On 28 July 1999, the Central Valley Water Board issued WDRs Order 99-100 (1999 Permit) to regulate, in part, the discharge of secondary-treated wastewater from the Facility to evaporation percolation ponds and tertiary-treated wastewater from the Facility to Central Canal.
4. On 14 March 2008, the Central Valley Water Board issued WDRs Order R5-2008-0033 (2008 Permit), which prescribes new requirements for the discharge. The 2008 Permit rescinded WDRs Order 99-100, except for enforcement purposes.
5. On 14 March 2008, the Central Valley Water Board issued Cease and Desist Order R5-2008-0032 (2008 CDO), which rescinded Cease and Desist Order (CDO) 5-01-001 and requires the District to cease and desist discharging wastes in violation and threatened violation of WDRs R5-2008-0033. The CDO requires

the Discharger, in part, to evaluate the Facility's treatment and disposal capacity and identify short-term and long-term measures to secure adequate treatment and disposal capacity for the volume, type, and concentrations of wastes in the influent projected through at least 2028.

6. On 21 November 2008, the Central Valley Water Board Assistant Executive Officer issued the Discharger ACL Complaint R5-2008-0583 assessing nine thousand dollars (\$9,000) in mandatory minimum penalties (MMPs) pursuant to CWC section 13385(i) for effluent limitation violations of the 1999 Permit that occurred at its Facility from 1 February 2004 to 13 March 2008 (Exhibit 1).
7. On 30 December 2008, the Discharger submitted a signed waiver to waive its right to a hearing within 90 days of issuance of the Complaint and requested that the \$9,000 in MMPs be applied toward compliance projects that were required and past due by ACL Order No. R5-2006-0003, making this request null and void.
8. On 8 July 2010, Central Valley Water Board staff issued a Notice of Violation (NOV) and draft Record of Violations (ROV) for 20 effluent limitation violations of the 2008 Permit totaling \$60,000 in MMPs. The alleged violations cited in the ROV occurred from 14 March 2008 to 31 January 2010. The ROV requested a response from the Discharger by 22 July 2010.
9. On 22 July 2010, the Discharger's legal counsel responded contesting the 8 July 2010 NOV/ROV.
10. On 5 November 2010, after reviewing the Discharger's comments, Central Valley Water Board staff concurred with the Discharger's contention that five of the BOD violations were incorrect and issued a Revised NOV and ROV identifying fifteen effluent limitation violations subject to \$45,000 in MMPs that occurred from 14 March 2008 to 31 January 2010.
11. On 6 January 2011, the Discharger's legal counsel responded contesting the 5 November 2010 the revised NOV/ROV.
12. On 9 December 2011, Central Valley Water Board staff issued an NOV with an updated draft ROV for alleged effluent violations from 14 March 2008 through 30 October 2011 totaling \$63,000 in MMPs.
13. On 3 January 2012, the Discharger's legal counsel responded contesting the 9 December 2011 NOV/ROV.
14. Central Valley Water Board staff has determined that the Discharger is out of compliance with several other components of its NPDES Permit and other Board Orders. Enforcement actions for outstanding enforcement orders and violations not subject to mandatory minimum penalties are under consideration by

management and will be handled in separate enforcement actions. The issuance of this ACLC does not preclude the Central Valley Water Board from taking enforcement on other violations not subject to mandatory minimum penalties.

15. CWC §13385(h)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

16. CWC §13385 (h)(2) states:

For the purposes of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

17. CWC §13385 subdivision (i)(1) states, in part:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- A) Violates a waste discharge requirement effluent limitation.
- B) Fails to file a report pursuant to Section 13260
- C) Files an incomplete report pursuant to Section 13260
- D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

18. CWC section 13385(k) states:

(1) In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i) against a publicly owned treatment works serving a small community, the state board or the regional board may elect to require the publicly owned treatment works to spend an equivalent amount towards the completion of a

compliance project proposed by the publicly owned treatment works, if the state board or the regional board finds all of the following:

(A) The compliance project is designed to correct the violations within five years.

(B) The compliance project is in accordance with the enforcement policy of the state board, excluding any provision in the policy that is inconsistent with this section.

(C) The publicly owned treatment works has prepared a financing plan to complete the compliance project.

(2) For the purposes of this subdivision, "a publicly owned treatment works serving a small community" means a publicly owned treatment works serving a population of 10,000 persons or less, a rural county, or a reasonably isolated and divisible segment of a larger municipality where the population of the segment is 10,000 persons or less, with a financial hardship as determined

19. CWC section 13323 states, in part:

Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or have failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

20. WDRs Order 99-100 General Discharge Specification B.2 states, "effluent shall have a pH between 6.0 and 9.0 pH units."
21. WDRs Order 99-100 General Discharge Specification B.3 states, "effluent electrical conductivity or EC shall not exceed that of source water plus 500  $\mu$ mhos/cm or 1000  $\mu$ mhos/cm, whichever is less."
22. WDRs Order 99-100 Discharge 001 (Central Canal) Specification C.3 states, in part, "effluent turbidity shall not exceed a monthly average of 2 NTU and a daily maximum of 5 NTU."
23. WDRs Order R5-2008-0033 Effluent Limitations and Discharge Specifications A.2 states, "Effluent shall not as an average monthly EC, exceed the monthly flow-weighted average of EC in the source water plus 500  $\mu$ mhos/cm, or a total of 1,000  $\mu$ mhos/cm, whichever is more stringent."
24. WDRs Order R5-2008-0033 Effluent Limitations and Discharge Specifications A.4 states, "Effluent shall not exhibit a pH of less than 6.5 or greater than 8.3 standard units."

25. WDRs Order R5-2008-0033 Effluent Limitations (Table 6) – Discharge Point D-001 (Tertiary Treatment) B.1.a states, in part:

TABLE 6. EFFLUENT LIMITATIONS				
Parameter	Units	Effluent Limitations		
		Average Monthly	Average Weekly	Maximum Daily
CONVENTIONAL POLLUTANTS				
Biochemical Oxygen Demand (BOD <sub>5</sub> ) @ 20°C	mg/L	10	15	30
	lbs/day <sup>1</sup>	38	56	113
Total Suspended Solids (TSS)	mg/L	10	15	30
	lbs/day <sup>1</sup>	38	56	113
Settleable Solids	ml/L	0.1	--	0.2
PRIORITY POLLUTANTS				
Bromoform	µg/L	4.3	--	8.6
NON-CONVENTIONAL POLLUTANTS <sup>4</sup>				
Ammonia Nitrogen, Total (as N) (May-October) <sup>3</sup>	mg/L	0.8	--	1.1
	lbs/day <sup>1</sup>	3.0	--	4.1
Ammonia Nitrogen, Total (as N) (November -April) <sup>3</sup>	mg/L	0.4	--	0.6
	lbs/day <sup>1</sup>	1.5	--	2.3
Turbidity	NTU	2	--	5 <sup>2</sup>

1. Based on a design flow of 0.45 mgd
2. 5 NTU more than 5% of the 24-hour period, 10 NTU at any time
3. Effective 19 May 2010. In interim, see Table 7
4. Effective 1 November 2008, if the Discharger certifies to the Executive Officer in writing that the ultraviolet system is operational and chlorine is no longer being used for disinfection purposes or detected in the influent, the Executive Officer may, at her discretion, notify the Discharger that these effluent limitations and associated monitoring are suspended.

26. WDRs Order R5-2008-0033 Effluent Limitations – Discharge Point D-001 (Tertiary Treatment) B.1.b states, "Percent Removal: The average monthly percent removal of BOD and total suspended solids shall not be less than 90 percent."
27. WDRs Order R5-2008-0033 Effluent Limitations – Discharge Point D-001 (Tertiary Treatment) B.1.e states, "Total coliform Organisms. Effluent total coliform organisms shall not exceed: i. 2.2 most probable number (MPN)/100 mL as a 7-day median; ii. 23 MPN/100 mL more than once in any month; and iii. 240 MPN/100 mL at any time."

28. WDRs Order R5-2008-0033 Effluent Limitations – Discharge Point D-001 (Tertiary Treatment) B.2 states, "Interim Effluent Limitations – The interim effluent limitation in Table 7 shall apply in lieu of the final effluent limitations specified for the same parameters in Table 6 until the effective date of the final effluent limitations as specified in footnotes 3 and 4, Table 6:

TABLE 7. INTERIM EFFLUENT LIMITATIONS			
Parameter	Units	Effluent Limitations	
		Average Monthly	Maximum Daily
Ammonia	mg/L	--	1.3
Bromoform	µg/L	--	28

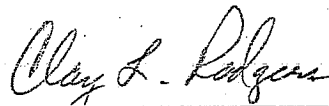
29. According to the Discharger's self-monitoring reports covering the period from 1 February 2004 through 13 March 2008, the Discharger committed eight violations of effluent limitations for turbidity, EC, and pH of Order 99-100; three of which are subject to MMPs. Attachment A to this Order summarizes these violations.
30. According to the Discharger's self-monitoring reports covering the period from 14 March 2008 through 31 December 2012, the Discharger committed twenty-five violations of effluent limitations for EC, pH, total ammonia nitrogen (as N), Bromoform, total coliform organisms, BOD, Settleable solids, TSS, and turbidity of Order 2008-0033; twenty-one of which are subject to MMPs. Attachment A to this Order summarizes these violations.
31. In accordance with CWC §13385(i), the total amount of the mandatory minimum penalty for 24 effluent limitation violations is \$72,000. (See Attachment A).

**MALAGA COUNTY WATER DISTRICT IS HEREBY GIVEN NOTICE THAT:**

1. The Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **\$72,000**, and that this Complaint supersedes ACL Complaint R5-2008-583 and addresses civil liability for effluent limitation violations subject to MMPs that occurred from 1 February 2004 through 31 December 2012. These violations are identified in Attachment A to the Complaint.
2. On **25/26 July 2013**, a hearing on this matter will be held at the Central Valley Water Board meeting, unless by **24 May 2013**:
  - a. The Discharger waives the hearing by completing the attached form (checking off the box next to Option 1) and returning it to the Central Valley Water Board, along with payment of the proposed civil liability; or
  - b. The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking

- off the box next to Option 2 on the attached form, and returning it to the Board along with a letter describing the issues to be discussed; or
- c. The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking off the box next to Option 3 on the attached form, and returning it to the Board along with a letter describing the issues to be discussed.
3. If a hearing on this matter is conducted, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

If this matter proceeds to hearing, the Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

  
for PAMELA C. CREEDON, Executive Officer  
5/1/13  
(Date)

Attachment A: Record of Violations  
Exhibit 1: ACL Complaint R5-2008-0583

**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

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By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Malaga County Water District (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2013-0527 (hereafter Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served. The person who has been issued a complaint may waive the right to a hearing."

☐ **(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full)**

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board
- b. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **\$72,000** by check that references "ACL Complaint R5-2013-0527" made payable to the "*State Water Pollution Cleanup and Abatement Account*." Payment must be received by the Central Valley Water Board by **24 May 2013**.
- c. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

☐ **(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

☐ **(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)



**ATTACHMENT A  
RECORD OF VIOLATIONS**

**Malaga County Water District, Malaga Wastewater Treatment Facility**

Record of violations (1 February 2004- 31 December 2012)

**MANDATORY MINIMUM PENALTIES**

(Data reported under Monitoring and Reporting Program No. 99-100 and R5-2008-0033)

<u>Violation ID<sup>1</sup></u>	<u>Violation Date</u>	<u>Violation Type<sup>2</sup></u>	<u>Violation Description<sup>3</sup></u>	<u>MMP Type<sup>4</sup></u>
696696	08/09/2007	OEV	8M; EC; 1000; umhos/cm; DM; 1033	EXEMPT
771676	08/10/2007	OEV	8M; pH; 9.0; pH units; I; 9.2	EXEMPT
771679	11/25/2007	OEV	11M; pH; 9.0; pH units; I; 9.2	EXEMPT
771678	12/03/2007	OEV	12M; EC; 782; umhos/cm; DM; 820	CHRONIC
771680	12/10/2007	OEV	12M; EC; 1000; umhos/cm; DM; 1700	CHRONIC
748354	02/15/2008	OEV	2M; EC; 816; umhos/cm; DM; 1100	CHRONIC
867973	3/31/2008	OEV	3M; EC; 813; umhos/cm; AM; 825	CHRONIC
868013	4/18/2008	OEV	4M; pH; 6.5-8.3; SU; IM; 8.5	CHRONIC
868014	4/19/2008	OEV	4M; pH; 6.5-8.3; SU; IM; 8.9	CHRONIC
868015	4/20/2008	OEV	4M; pH; 6.5-8.3; SU; IM; 9.0	CHRONIC
868016	4/21/2008	OEV	4M; pH; 6.5-8.3; SU; IM; 8.9	CHRONIC
868098	7/16/2008	CAT1	7M; NH3-N; 1.3; mg/L; DM; 2.5	SERIOUS
868022	7/19/2008	OEV	7M; pH; 6.5-8.3; SU; IM; 9.1	CHRONIC
868021	7/30/2008	OEV	7M; EC; 891; umhos/cm; AM; 911	CHRONIC
868097	10/14/2008	CAT2	10M; Bromoform; 28; ug/L; DM; 36	SERIOUS
868095	10/17/2008	OEV	10M; TCO; 240; MPN/100 ml/L; DM; 300	CHRONIC
868101	11/17/2008	CAT2	10M; Bromoform; 28; ug/L; DM; 32	CHRONIC
868102	06/05/2009	OEV	6M; pH; 6.5-8.3; SU; IM; 8.6	EXEMPT <sup>5</sup>
868104	07/08/2009	OEV	7M; BOD; 15; mg/L; AW; 19	EXEMPT
868105	07/08/2009	OEV	7M; BOD; 56; lbs/day; AW; 61.8	EXEMPT
868109	08/28/2009	CAT1	8M; SS; 0.2; ml/L; DM; 7.5	SERIOUS
868106	08/30/2009	CAT1	8M; SS; 0.1; ml/L; AM; 0.29	SERIOUS
868112	12/7/2009	OEV	12M; pH; 6.5-8.3; SU; IM; 8.5	CHRONIC
893428	07/08/2010	CAT1	7M; NH3-N; 0.8; mg/L; AM; 2.8	SERIOUS

896916	07/08/2010	CAT1	7M; NH3-N; 1.1; mg/L; DM; 2.6	SERIOUS
878012	07/09/2010	OEV	7M; TCO; 240; MPN/100 ml/L; DM; 1600	EXEMPT
893443	11/15/2010	CAT1	11M; TSS; 15; mg/L; AW; 17	CHRONIC
893444	11/30/2010	CAT1	11M; TSS; 90%; % removal; AM; 85%	CHRONIC
893442	11/30/2010	CAT1	11M; TSS; 10; mg/L; AM; 14	SERIOUS
912164	03/24/2011	OEV	3M; Turbidity; 2; NTU; AM; 2.7	CHRONIC
912555	03/30/2011	CAT1	3M; NH3-N; 0.4; mg/L; AM; 0.5.	SERIOUS

1 Violation ID in CIWQS

2 Abbreviations used in this table are defined in table of abbreviations below.

3 Violation Descriptions are coded as follows: Reporting period (e.g., 4M = April); constituent or parameter (e.g., pH, Flow); effluent limitation; units; limitation period; and reported result.

4 Chronic non-serious and serious violations are subject to MMPs. The first three non-serious violations within a six-month period are exempt.

5 More than a six-month break of effluent limitation violations subject to MMPs; thus, chronic count resets.

Abbreviation	Definition
ACL	Administrative Civil Liability
AM	Average Monthly
AW	Average Weekly
BOD	Biochemical Oxygen Demand
CAT1	Violation of Group 1 effluent limitation as defined in Enforcement Policy
CAT2	Violation of Group 2 effluent limitation as defined in Enforcement Policy
CIWQS	California Integrated Water Quality System database
DM	Daily Maximum
EC	Electrical conductivity
IM	Instantaneous maximum
M	Monthly
MMP	Mandatory minimum penalty
MPN	Most Probable Number
NH3-N	Ammonia as nitrogen
NTU	Nephelometric turbidity unit
OEV	Other effluent violation as defined in Enforcement Policy
SS	Settleable solids
SU	Standard unit (for pH)
TCO	Total coliform organisms

<u>MMP VIOLATION TYPE</u>	<u>VIOLATION PERIOD</u> <u>2/01/04 TO 31 December 2012</u>
Group 1 Serious Violations Subject to MMPs	7
Group 2 Serious Violations Subject to MMPs:	1
Chronic (non-serious) Violations Subject to MMPs:	16
Exempt Violations:	9
<b>Total Violations Subject to MMPs:</b>	<b>24</b>

***Mandatory Minimum Penalty = 24 violations x \$3,000 = \$72,000***

## **EXHIBIT 1**



Linda S. Adams  
Secretary for  
Environmental  
Protection

# California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair

1685 E Street, Fresno, California 93706  
(559) 445-5116 • Fax (559) 445-5910  
<http://www.waterboards.ca.gov/centralvalley>



Arnold  
Schwarzenegger  
Governor

FILE

21 November 2008

Mr. Russ Holcomb  
Malaga County Water District  
3580 South Frank Street  
Fresno, CA 93725

CERTIFIED MAIL  
7007 3020 0000 1750 0378

## ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0583 FOR ASSESSMENT OF MANDATORY MINIMUM PENALTIES, MALAGA COUNTY WATER DISTRICT WWTF, FRESNO COUNTY

Enclosed is an Administrative Civil Liability Complaint (Complaint), issued pursuant to California Water Code (CWC) section 13385, for violations of Waste Discharge Requirements (WDRs) Order 99-100 (NPDES No. CA0084239) that have occurred at the Malaga County Water District (District) Wastewater Treatment Facility (WWTF) in Fresno County. The Complaint charges the District with civil liability in the amount of **nine thousand dollars (\$9,000)**, which represents the sum of the mandatory minimum penalties for effluent limitation violations that occurred at the WWTF during the period of 1 February 2004 through 13 March 2008.

On 10 July 2008, staff issued the District a Notice of Violation and draft Record of Violations of Mandatory Minimum Penalties (MMPs) for the period of 1 February 2004 through 30 April 2008. By 18 September 2008 letter, the District acknowledged the identified violations. Staff has since changed the end of review period from 30 April 2008 to 13 March 2008, when the Central Valley Water Board adopted WDRs Order R5-2008-0033 and rescinded WDRs Order 99-100. This change reduced the civil liability from fifteen thousand dollars to nine thousand dollars.

On 5 August 2008, staff requested that State Water Board staff evaluate the District to determine the District's eligibility for designation as a small community with financial hardship. On 21 August 2008, staff received a memorandum from the Executive Director of the State Water Board confirming that the District's WWTF is a publicly owned treatment works serving a small community with financial hardship within the meaning of CWC section 13385(k)(2). Therefore, the Central Valley Water Board may entertain proposals from the Discharger to have all or a portion of the assessed penalty applied to the construction of a compliance project designed to rectify within five years the conditions that led to the violations.

Pursuant to CWC section 13323, the District may:

- Pay the assessed civil liability and waive its right to a hearing before the Central Valley Water Board by signing the enclosed waiver (checking off the box next to item #4) and submitting it to this office by **30 December 2008**, along with payment for the full amount;
- Agree to enter into settlement discussions with the Central Valley Water Board, which may include proposals for the penalty to be applied towards a compliance project

*California Environmental Protection Agency*

pursuant to CWC section 13385(k), and request that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and submitting it, along with a letter stating the issues to be discussed, to this office by **30 December 2008**; or

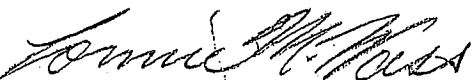
- Contest the Complaint and/or enter into settlement discussions with the Central Valley Water Board without signing the enclosed waiver.

If the District chooses to sign the waiver and pay the assessed civil liability, this will be considered a tentative settlement of the violations in the Complaint. This settlement will be considered final pending a 30-day period of public notice, during which time interested parties may comment on this action by submitting information to this office, attention Jill Walsh. Should the Central Valley Water Board receive new information or comments during this comment period, the Central Valley Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint.

If the Central Valley Water Board does not receive a signed waiver **by 30 December 2008**, then a hearing will be scheduled for the **5/6 February 2009** Central Valley Water Board meeting in Rancho Cordova. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify an Administrative Civil Liability Order based on the enclosed Complaint, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability. Specific notice about this hearing and its procedures will be provided under separate cover.

Any comments or evidence concerning the enclosed Complaint must be submitted to this office, attention Jill Walsh, **no later than 5 p.m. on 30 December 2008**. This includes material submitted by the District to be considered at a hearing and material submitted by interested parties, including members of the public, who wish to comment on the proposed settlement. If the Central Valley Water Board does not hold a hearing on the matter, and the terms of the final settlement are not significantly different from those proposed in the enclosed Complaint, then there will not be additional opportunities for public comment on the proposed settlement. Written materials received after **5 p.m. on 30 December 2008** will not be accepted and will not be incorporated into the administrative record if doing so would prejudice any party.

If you have any questions or comments regarding the Administrative Civil Liability Complaint, please contact Jill Walsh at (559) 445-5130 or Jo Anne Kipps at (559) 445-5035.

  
LONNIE M. WASS  
Supervising Engineer

Enclosure: ACL Complaint R5-2008-0583

See next page for cc list



cc w/ encl: Ms. Pamela Creedon, Executive Officer, Central Valley Water Board, Rancho  
Cordova  
Mr. Kenneth Greenberg, USEPA, Region 9, San Francisco  
Mr. Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento  
Mr. Reed Sato, Office of Enforcement, SWRCB, Sacramento  
Ms. Lori Okun, Office of Chief Counsel, SWRCB, Sacramento  
Ms. Emel Wadhwani, Office of Chief Counsel, SWRCB, Sacramento  
Fresno Environmental Health Department, Fresno

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0583

MANDATORY PENALTY  
IN THE MATTER OF

MALAGA COUNTY WATER DISTRICT  
WASTEWATER TREATMENT FACILITY  
FRESNO COUNTY

This Complaint is issued to the Malaga County Water District (hereafter Malaga CWD or Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability (ACL), CWC section 13323, which authorizes the Executive Officer to issue this Complaint, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order 99-100 (NPDES No. CA0084239) at its Wastewater Treatment Facility (WWTF).

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) finds the following:

1. The Discharger owns and operates a wastewater collection, treatment, and disposal system and provides sewerage service for the unincorporated community of Malaga and industrial users. Non-domestic sewage comprises approximately 83 percent of the influent. Tertiary-treated wastewater is discharged to the Fresno Irrigation District Central Canal (Central Canal), a water of the United States.
2. The Central Canal is a distributary of the Kings River via the Fresno and Fancher Creek Canals and feeds into other canals and aqueducts to the south and to the west. The Central Canal is hydraulically connected to Fresno Slough that, during periods of heavy rain, drains to the San Joaquin River, both also waters of the United States.
3. On 28 July 1999, the Central Valley Water Board adopted WDRs Order 99-100 to regulate, in part, the discharge of up to 0.35 million gallons per day (mgd) of tertiary-treated wastewater from the WWTF to Central Canal.
4. On 14 March 2008, the Central Valley Water Board adopted WDRs Order R5-2008-0033, which prescribed new requirements for the discharge and rescinded WDRs Order 99-100.
5. CWC section 13385(i) requires assessment of mandatory penalties and states, in part, the following:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars



(\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- A) Violates a waste discharge requirement effluent limitation.
- B) Fails to file a report pursuant to Section 13260.
- C) Files an incomplete report pursuant to Section 13260.
- D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

6. CWC section 13323 states, in part, the following:

Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

- 7. WDRs Order 99-100 General Discharge Specification B.2 states, "effluent shall have a pH between 6.0 and 9.0 pH units."
- 8. WDRs Order 99-100 General Discharge Specification B.3 states, "effluent [electrical conductivity or EC] shall not exceed that of source water plus 500  $\mu$ mhos/cm, or 1000  $\mu$ mhos/cm, whichever is less."
- 9. WDRs Order 99-100 Discharge 001 (Central Canal) Specification C.3 states, in part, effluent "turbidity shall not exceed a monthly average of 2 NTU and a daily maximum of 5 NTU."
- 10. On 10 July 2008, Central Valley Water Board staff issued the Discharger a Notice of Violation and a draft Record of Violations identifying violations of WDRs Order 99-100 that are subject to Mandatory Minimum Penalties (MMPs). The draft Record of Violations covers the period of 1 February 2004 through 30 April 2008. According to the Discharger's self-monitoring reports, the Discharger committed one (1) violation of the effluent turbidity limitation, two (2) violations of the effluent pH limitation, and five (5) violations of the effluent EC limitation during the period of 1 February 2004 through 30 April 2008. Attachment A, a part of this Complaint, identifies these eight effluent limitation violations, of which three are chronic violations subject to MMPs pursuant to CWC section 13385(i).
- 11. By 18 September 2008 letter, the Discharger acknowledged the violations identified in the draft Record of Violations identified in Finding 10 and Attachment A to this Complaint.

Following issuance of the Notice of Violation, staff changed the end of the review period from 30 April 2008 to 13 March 2008, when the Central Valley Water Board issued WDRs Order R5-2008-0033.

12. The total amount of the MMPs assessed for the three cited chronic violations is **nine thousand dollars (\$9,000)**.

13. CWC section 13385 (k)(1) states, in part:

In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i) against a publicly owned treatment works serving a small community, the state board or the regional board may elect to require the publicly owned treatment works to spend an equivalent amount towards the completion of a compliance project proposed by the publicly owned treatment works, if the state board or the regional board finds all of the following:

(A) The compliance project is designed to correct the violations within five years.

(B) The compliance project is in accordance with the enforcement policy of the state board, excluding any provision in the policy that is inconsistent with this section.

(C) The publicly owned treatment works has prepared a financing plan to complete the compliance project.

14. CWC section 13385 (k)(2) states, in part:

For the purposes of this subdivision, "a publicly owned treatment works serving a small community" means a publicly owned treatment works serving a population of 10,000 persons or fewer or a rural county, with a financial hardship as determined by the state board after considering such factors as median income of the residents, rate of unemployment, or low population density in the service area of the publicly owned treatment works.

15. On 5 August 2008, Central Valley Water Board staff requested State Water Resources Control Board (State Water Board) staff to evaluate the Discharger's eligibility for designation as a small community with a financial hardship.
16. On 21 August 2008, Central Valley Water Board staff received a memorandum from the Executive Director of the State Water Board confirming that the Discharger's WWTF is a publicly owned treatment works serving a small community with a financial hardship within the meaning of CWC section 13385(k)(2). This memorandum can be found as Attachment B, a part of this Complaint.
17. On 26 January 2006, the Central Valley Water Board adopted Administrative Civil Liability Order R5-2006-0003 based on findings of violations of WDRs Order 99-100. The MMPs totaled one million one hundred seven thousand dollars (\$1,107,000). Pursuant to CWC

section 13385(k), the Central Valley Water Board suspended payment of the MMPs as the Discharger proposed to spend an equivalent amount towards completion within five years of an approved compliance project designed to correct the violations. When the full amount of the \$1,107,000 is spent on the project, the penalties will be permanently suspended.

18. By 18 September 2008 letter, the Discharger indicated that, as of 1 June 2008, it had expended \$1,049,588 to complete components of the approved compliance project.
19. The Discharger has also indicated that it anticipates spending approximately \$400,000 more than the \$1,107,000 that it is required to spend on a compliance project pursuant to ACL Order R5-2006-0003. The Discharger may demonstrate that it is going to spend funds in excess of the amount required under ACL Order R5-2006-0003, and these funds may be applied in lieu of assessing the penalties against the Discharger should the Discharger's project meet both the requirements contained in CWC section 13385(k) and those in the State Board's *Water Quality Enforcement Policy*. The Discharger shall submit documentation of its projected expenditures beyond those required under Order R5-2006-0003 within the comment period so that the Board may consider applying these projected expenditures towards the penalties charged in this Complaint. In the event that the Board determines that approving a compliance project is an appropriate way to resolve the allegations contained herein, the Board will develop an ACL Order memorializing that settlement agreement.
20. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with Title 14 California Code of Regulations, section 15321(a)(2).

**MALAGA COUNTY WATER DISTRICT IS HEREBY GIVEN NOTICE THAT:**

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **nine thousand dollars (\$9,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **5/6 February 2009**, unless the Discharger does either of the following by **30 December 2008**:
  - a. Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **nine thousand dollars (\$9,000)**; or

- b. Agrees to enter into settlement discussions with the Central Valley Water Board and requests that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and returning it to the Central Valley Water Board along with a letter describing the issues to be discussed. This includes documentation that may be submitted to the Board under Finding 19, above.
3. If a hearing on this matter is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

*Loren J. Harlow*

LOREN J. HARLOW, Assistant Executive Officer

*11-21-2008*

Attachment A: Record of Violations

Attachment B: State Board Memorandum dated 18 August 2008 from Dorothy Rice to Jack Del Cohte

JKW: 11/18/08

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent Malaga County Water District (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2008-0583 (hereinafter the "Complaint");
2. I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served" with the Complaint;
3. I hereby waive any right the Discharger may have to a hearing before the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) within ninety (90) days of service of the Complaint; and
4. ☐ **(Check here if the Discharger will waive the hearing requirement and will pay the fine)**
  - a. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **nine thousand dollars (\$9,000)** by check, which contains a reference to "ACL Complaint R5-2008-0583" made payable to the "State Water Pollution Cleanup and Abatement Account." Payment must be received by the Central Valley Water Board by **30 December 2008** or this matter will be placed on the Central Valley Water Board's agenda for adoption as initially proposed in the Complaint.
  - b. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Central Valley Water Board receive new information or comments during this comment period, the Central Valley Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. New information or comments include those submitted by personnel of the Central Valley Water Board who are not associated with the enforcement team's issuance of the Complaint.
  - c. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

-or-

5. ☐ **(Check here if the Discharger will waive the 90-day hearing requirement, but will not pay at the current time. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.)** I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
6. If a hearing on this matter is held, the Central Valley Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. Modification of the proposed Administrative Civil Liability Order may include increasing the dollar amount of the assessed civil liability.

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

# **ATTACHMENT A** **ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0583**

## **MALAGA COUNTY WATER DISTRICT WWTF** **RECORD OF VIOLATIONS (1 February 2004 to 13 March 2008) MANDATORY PENALTIES** (Data reported under Monitoring and Reporting Program 99-100)

Violation ID <sup>1</sup>	Violation Date	Parameter	Units	Period	Violation Type <sup>2</sup>	Limit	Reported Value	MMP (Chronic)	MMP (Serious)
1	2/28/05	Turbidity	NTU	Monthly Average	CAT1	2.0	2.7	E <sup>3</sup>	
2	9/6/05	EC <sup>4</sup>	µmhos/cm	Daily Maximum	OE <sup>5</sup>	811 <sup>5</sup>	840	E <sup>3</sup>	
3	8/9/07	EC	µmhos/cm	Daily Maximum	OE <sup>5</sup>	1,000	1,033	E <sup>3</sup>	
4	8/10/07	pH	pH units	Daily Maximum	OE <sup>5</sup>	9.0	9.2	E <sup>3</sup>	
5	11/25/07	pH	pH units	Daily Maximum	OE <sup>5</sup>	9.0	9.2	E <sup>3</sup>	
6	12/3/07	EC	µmhos/cm	Daily Maximum	OE <sup>5</sup>	782 <sup>6</sup>	820	\$3,000	
7	12/10/07	EC	µmhos/cm	Daily Maximum	OE <sup>5</sup>	1,000	1,700 <sup>7</sup>	\$3,000	
8	2/15/08	EC	µmhos/cm	Daily Maximum	OE <sup>5</sup>	816 <sup>8</sup>	1,100	\$3,000	

<sup>1</sup> Violation ID in CIWQS

<sup>2</sup> Table of Abbreviations below defines abbreviations used in this table.

<sup>3</sup> Violation exempt from MMP amount pursuant to CWC Section 133850(1).

<sup>4</sup> Effluent EC violations considered potentially subject to MMP are those that occurred when daily effluent EC: (a) was greater than 1,000 µmhos/cm or (b) was less than 1,000 µmhos/cm but greater than source water EC plus 500 µmhos/cm on days when source water EC was monitored. This approach was followed in evaluating compliance with the effluent EC limitation in ACL Order R5-2006-0003, which was issued for violations subject to MMP's for the period of 1 February 2000 through 30 June 2004.

<sup>5</sup> Source water EC reported as 311 µmhos/cm on 9/6/05 yields a maximum effluent EC limit of 811 µmhos/cm on that date.

<sup>6</sup> Source water EC reported as 282 µmhos/cm on 12/3/07 yields a maximum effluent EC limit of 782 µmhos/cm on that date.

<sup>7</sup> The Discharger provided no information to indicate this value, reported by the lab, is suspect or otherwise inaccurate.

<sup>8</sup> Source water EC reported as 316 µmhos/cm on 2/15/08 yields a maximum effluent EC limit of 816 µmhos/cm on that date.

### Abbreviation Definition

CAT1	Violation of Group 1 pollutant effluent limitation as defined in Enforcement Policy
EC	Electrical conductivity at 25°C
CIWQS	California Integrated Water Quality System database
MMP	Mandatory Minimum Penalty
OE <sup>5</sup>	Violation of other effluent limitation

ATTACHMENT A  
ACL COMPLAINT R5-2008-0583  
MALAGA CWD WWTF  
RECORD OF VIOLATIONS

VIOLATION SUMMARY						
Violation	Chronic Violations		Serious Violations		Net Number	Net Liability
	Number	Amount	Number	Amount		
pH	2	\$6,000			2	\$6,000
Turbidity	1	\$3,000			1	\$3,000
EC	5	\$15,000			5	\$15,000
Total Violations	8	\$24,000			8	\$24,000
Exempt (E) Violations	5	<\$15,000>			5	<\$15,000>
Net Violations & Penalty	3	\$9,000			5	\$9,000